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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 395 OF 1997

M/s. Imperial Rubber Industries ... Petitioner

V/s

Janardan Dusadh & anr. ... Respondents

Mr. N.Y. Gupte for the petitioner.

None for the respondents.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 29TH JANUARY, 2007.

ORAL JUDGMENT:

1. The petitioner has filed this present petition challenging the award of the Labour Court in Reference (IDA) No. 154 of 1989. This award which is dated 24.9.1996 grants the respondent workman reinstatement with continuity of service and full back wages with effect from 23.6.1988.

2. The workman was employed with the petitioner for about two years. In 1988, he sought revision of his wages. However, the petitioner did not accept this demand. According to the petitioner, the workman worked

only for 5 days in April, 1988; 17 days in May, 1988 and 7 days in June, 1988 till 23.6.1988 when he stopped reporting for duty. A letter was issued on 9.8.1988 by the petitioner to the respondent workman calling upon him to report for duty. Oral messages were also sent through some of his colleagues, directing him to report for duty. However, the workman stayed away from work. A dispute was raised by the workman for reinstatement with continuity of service and full back wages. When the demand was admitted in conciliation, the Conciliation Officer directed the respondent workman to report for duty on 18.11.1988. However, the petitioner informed the respondent workman and 3 other workmen to report for duty from 22.11.1988. Accordingly, the 3 other workmen reported for duty, however, the petitioner failed to attend work. A letter was also sent on 22.11.1988 calling upon the respondent to rejoin. The proceedings before the conciliation officer were closed and the Reference was made for adjudication before the Presiding Officer, 5th Labour Court, Mumbai.

3. The Labour Court after considering the pleadings and the evidence on record has held that the petitioner has illegally terminated the services of the workman from 23.6.1988 by removing his name from the muster roll. The mandatory requirements of Section 25-F of the

Industrial Disputes Act were not followed by the petitioner and, therefore, the Labour Court directed the reinstatement with continuity of service and full back wages.

4. Mr. Gupte who appears for the petitioner submits that the petitioner has not terminated the services of the workman and it is ready and willing to employ him even today. He points out that, at every stage, the petitioner had offered to permit the workman to resume duty which the workman chose to decline. Mr. Gupte submits that before the Conciliation Officer as well as before the Labour Court, the petitioner had offered to permit the workman to resume duty, however, the workman did not respond and instead remained absent from work. He also points out that before the petition was admitted, the petitioner had called upon the workman to resume duty in accordance with the award of the Labour Court. A letter was issued to him on 21.1.1997 directing him to report on duty, however, the respondent did not care to join the service. Thereafter, the notice of the present writ petition was issued to him and the respondent reported for duty on 5.3.1997. On 10.3.1997 when the matter came up before the Court for admission, a statement was made that the respondent workman had been reinstated on 5.3.1997 and the petition

was admitted. The award was stayed only in respect of back wages awarded by the Labour Court. Mr. Gupte points out that, immediately after the admission of the petition, the workman failed to report for duty from 12.3.1997 and has been absent ever since. On 21.3.1997, a letter was also issued to the union representing the workman calling upon it to inform the workman to report for duty. The petitioner obtained his residential address from a third person. Accordingly, a representative of the petitioner went to the respondent workman's place of residence. However, the respondent workman was not available and a letter directing the respondent to report for duty was accepted by one Dinesh, who apparently was the nephew of the respondent workman.

5. In these circumstances, the challenge in the petition remains only in respect of back wages. From November, 1988 onwards, the petitioner has been calling the respondent workman back on duty. He has admitted in his evidence before the Labour Court the receipt of letters dated 9.8.1988 and 22.11.1988 from the petitioner. All these letters call upon the workman to report on duty. In these circumstances, it is difficult to accept the findings of the Labour Court that the workman is entitled for full back wages. There is

evidence on record that even before the Conciliation Officer the petitioner had agreed to permit the workman to join duty which offer he did not accept. The respondent was again offered employment at the time when the petition was admitted and in fact, he had been reinstated and worked for a couple of days, after which he did not attend work. It appears that the respondent workman, despite all efforts by the petitioner, is not interested in joining duty.

6. Mr. Gupte submits that, even today if the respondent workman reports for duty, the petitioner is willing to take him back in service, but without back wages.

7. In this view of the matter, the order of the Labour Court is upheld to the extent that the respondent workman is entitled to reinstatement with continuity of service. However, he will be reinstated without back wages.

8. Writ petition disposed off accordingly. Rule discharged.

(SMT. NISHITA MHATRE, J.)